

#### **48-2a-100. Scope of chapter.**

Until this chapter is repealed January 1, 2016, this chapter applies only to a limited partnership formed on or before December 31, 2013, that has not elected to be governed by Chapter 2e, Utah Uniform Limited Partnership Act, as provided in Section 48-2e-1205.

Enacted by Chapter 412, 2013 General Session

#### **48-2a-101. Definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) "Certificate of limited partnership" means:
  - (a) a certificate referred to in Section 48-2a-201; and
  - (b) a certificate as amended or restated.
- (2) "Contribution" means any of the following that a partner contributes to a limited partnership in the partner's capacity as a partner:
  - (a) cash;
  - (b) property;
  - (c) a service rendered; or
  - (d) a promissory note or other binding obligation to:
    - (i) contribute cash;
    - (ii) contribute property; or
    - (iii) perform a service.
- (3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.
- (4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 48-2a-402.
- (5) "Foreign limited partnership" means a partnership:
  - (a) formed under the laws of a state other than this state; and
  - (b) having as partners:
    - (i) one or more general partners; and
    - (ii) one or more limited partners.
- (6) "General partner" means a person who is:
  - (a) admitted to a limited partnership as a general partner in accordance with the partnership agreement; and
  - (b) named in the certificate of limited partnership as a general partner.
- (7) "Limited partner" means a person who is admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- (8) "Limited partnership" and "domestic limited partnership" mean a partnership:
  - (a) formed by two or more persons under the laws of this state; and
  - (b) having:
    - (i) one or more general partners; and
    - (ii) one or more limited partners.
- (9) "Partner" means a limited or a general partner.
- (10) "Partnership agreement" means a valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
- (11) "Partnership interest" means:

- (a) a partner's share of the profits and losses of a limited partnership; and
- (b) the right to receive distributions of partnership assets.
- (12) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.
- (13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (14) "Subject entity" means a corporation, business trust or association, a real estate investment trust, a common-law trust, or another unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.
- (15) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.
- (16) "Tribal limited partnership" means a limited partnership:
  - (a) formed under the law of a tribe; and
  - (b) that is at least 51% owned or controlled by the tribe.

Amended by Chapter 249, 2008 General Session

**48-2a-102. Name.**

- (1) The name of each limited partnership as set forth in its certificate of limited partnership:
  - (a) shall contain the terms:
    - (i) "limited partnership";
    - (ii) "limited";
    - (iii) "L.P."; or
    - (iv) "Ltd.";
  - (b) may not contain the name of a limited partner unless:
    - (i) it is the name of a general partner;
    - (ii) it is the corporate name of a corporate general partner; or
    - (iii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;
  - (c) may not contain:
    - (i) the words:
      - (A) "association";
      - (B) "corporation"; or
      - (C) "incorporated";
    - (ii) any abbreviation of a word listed in this Subsection (1)(c); or
    - (iii) any word or abbreviation that is of like import to the words listed in Subsection (1)(c)(i) in any other language;
  - (d) without the written consent of the United States Olympic Committee, may not contain the words:
    - (i) "Olympic";
    - (ii) "Olympiad"; or
    - (iii) "Citius Altius Fortius"; and

(e) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute" or "institution."

(2) (a) A person or entity other than a limited partnership formed or registered under this title may not use in its name in this state any of the terms:

- (i) "limited";
- (ii) "limited partnership";
- (iii) "Ltd."; or
- (iv) "L.P."

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

- (A) "corporation";
- (B) "incorporated"; or
- (C) any abbreviation of a word listed in this Subsection (2)(b)(i);

(ii) a limited liability company may use in its name in this state the terms:

- (A) "limited";
- (B) "limited company";
- (C) "L.C.";
- (D) "L.L.C.";
- (E) "LC"; or
- (F) "LLC"; and

(iii) a limited liability partnership may use the terms "limited liability partnership," "L.L.P.," or "LLP" in the manner allowed in Section 48-1-45.

(3) Except as authorized by Subsection (4), the name of a limited partnership must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the corporate name of any corporation incorporated or authorized to transact business in this state;

(c) any limited partnership name reserved under this chapter;

(d) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(e) any fictitious name adopted by a foreign corporation or limited partnership authorized to transact business in this state because its real name is unavailable;

(f) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(g) any assumed business name, trademark, or service mark registered by the division.

(4) (a) A limited partnership may apply to the division for approval to file its certificate under, or to reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve of the name for which application is made under

Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P."; or

(vii) "Ltd.";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization;

(f) differences between singular and plural forms of words for a limited partnership:

(i) formed in or registered as a foreign limited partnership in this state on or after May 4, 1998; or

(ii) that changes its name on or after May 4, 1998;

(g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(i) the sequence of letters or numbers is identical; and

(ii) the limited partnership:

(A) is formed in or registered as a foreign limited partnership in this state on or after May 3, 1999; or

(B) changes its name on or after May 3, 1999; or

(h) differences in abbreviations, for a limited partnership:

(i) formed in or registered as a foreign limited partnership in this state on or after May 1, 2000; or

(ii) that changes its name on or after May 1, 2000.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that the limited partnership is an agency of this state or

any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) (a) The requirements of Subsection (1)(e) do not apply to a limited partnership that is formed in or registered as a foreign limited partnership in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any limited partnership formed in or registered as a foreign limited partnership in this state shall comply with the requirements of Subsection (1)(e).

Amended by Chapter 218, 2010 General Session

**48-2a-103. Reservation of name.**

(1) The exclusive right to a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and intending to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(2) The reservation shall be made by filing with the division an application, executed under penalty of perjury by the applicant, to reserve a specified name. If the division finds that the name is available for use by a domestic or a foreign limited partnership, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days. The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Amended by Chapter 189, 1991 General Session

**48-2a-103.5. Limited partnership name -- Limited rights.**

The authorization to file a certificate under or to reserve or register a limited partnership name as granted by the division does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Enacted by Chapter 189, 1991 General Session

**48-2a-105. Records to be kept.**

Each limited partnership shall keep at its principal place of business, as specified in the certificate of limited partnership required by Section 48-2a-201, the following:

- (1) a current list in alphabetical order of the full name and last known business address of each partner, separately identifying the general partners and the limited partners;
- (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with the executed copies of any powers of attorney pursuant to which the certificate has been executed;
- (3) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (4) copies of any then effective written limited partnership agreements and of any financial statements of the limited partnership for the three most recent years; and
- (5) unless contained in a written partnership agreement, a writing setting out:
  - (a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
  - (b) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
  - (c) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any of the partner's contribution; and
  - (d) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

Amended by Chapter 189, 1991 General Session

**48-2a-106. Nature of business.**

A limited partnership may carry on any business, except as otherwise prohibited by applicable provision of the Utah Code.

Enacted by Chapter 233, 1990 General Session

**48-2a-107. Business transactions of partner with partnership.**

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Enacted by Chapter 233, 1990 General Session

**48-2a-108. Conversion of certain entities to a limited partnership.**

Any subject entity may convert to a limited partnership under this chapter by complying with Section 48-2a-111 and filing with the division:

- (1) articles of conversion that satisfy the requirements of Section 48-2a-109; and
- (2) a certificate of limited partnership that satisfies the requirements of Section 48-2a-201.

Enacted by Chapter 260, 2001 General Session

**48-2a-109. Articles of conversion.**

The articles of conversion shall state:

- (1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;
- (2) the name of the subject entity immediately prior to the filing of the articles of conversion;
- (3) the name of the domestic limited partnership as set forth in its certificate of limited partnership filed in accordance with Section 48-2a-201;
- (4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic limited partnership if it is not to be effective upon the filing of the articles of conversion and the certificate of limited partnership; and
- (5) that the conversion has been duly approved by the owners of the subject entity.

Enacted by Chapter 260, 2001 General Session

**48-2a-110. Effect of conversion.**

- (1) Upon the filing with the division of the articles of conversion and the certificate of limited partnership or, if applicable, upon the future effective date or time of the articles of conversion and the certificate of limited partnership, the subject entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2a-201, the existence of the limited partnership shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.
- (2) The conversion of any subject entity into a domestic limited partnership shall not affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic limited partnership or the personal liability of any person incurred prior to the conversion.
- (3) When a conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity remain vested in the domestic limited partnership to which the subject entity has converted and shall be the property of the domestic limited partnership and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic limited partnership to which the subject entity has converted and may be enforced against it to the same extent as if those debts,

liabilities, and duties had been incurred or contracted by it in its capacity as a domestic limited partnership.

(4) Unless otherwise agreed, or as required under applicable law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not constitute a dissolution of the subject entity but shall constitute a continuation of the existence of the converting subject entity in the form of a domestic limited partnership. When any subject entity has been converted to a domestic limited partnership pursuant to this part, the domestic limited partnership shall thereafter, for all purposes of the laws of this state, be considered to be the same entity as the converting subject entity.

Enacted by Chapter 260, 2001 General Session

**48-2a-111. Approval of conversion.**

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate, and the new partnership agreement, if any, for the domestic limited partnership must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving such conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new partnership agreement.

Enacted by Chapter 260, 2001 General Session

**48-2a-112. No limitation on other changes.**

The provisions of Sections 48-2a-108 and 48-2a-111 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other entity in this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law.

Enacted by Chapter 260, 2001 General Session

**48-2a-113. Approval of limited partnership conversion to subject entity.**

(1) A domestic limited partnership may convert to any subject entity upon the authorization of the conversion in accordance with this section.

(a) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement.

(b) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as specified in the partnership agreement for authorizing a merger that involves the partnership as a constituent party to the merger.



(c) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion must be authorized by unanimous consent of all partners.

(2) A converted domestic limited partnership shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic limited partnership, as well as the debts, liabilities, and duties of the domestic limited partnership, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic limited partnership has converted.

(3) Unless otherwise agreed, the conversion of a domestic limited partnership to another entity, pursuant to this section, shall not require the domestic limited partnership to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic limited partnership to a subject entity under this section, all interests in, or securities of or rights in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic limited partnership is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Enacted by Chapter 260, 2001 General Session

**48-2a-201. Certificate of limited partnerships.**

(1) In order to form a limited partnership a certificate of limited partnership must be executed and filed with the division, setting forth:

- (a) the name of the limited partnership;
- (b) the information required by Subsection 16-17-203(1);
- (c) the name and business address of each general partner;
- (d) (i) the latest date upon which the limited partnership is to dissolve, if the duration of the limited partnership is to be limited; or
- (ii) a statement to the effect that the limited partnership is to have perpetual duration; and

(e) any other matters the general partners determine to include.

(2) A limited partnership is formed:

(a) at the time of the filing of the certificate of limited partnership with the division as evidenced by the stamped copy returned by the division pursuant to Subsection 48-2a-206(1); or

(b) at any later time specified in the certificate of limited partnership.

Amended by Chapter 364, 2008 General Session

**48-2a-202. Amendment to certificate.**

(1) (a) A certificate of limited partnership is amended by filing a certificate of amendment with the division.

(b) A certificate of amendment filed under this Subsection (1) shall state:

- (i) the name of the limited partnership;
- (ii) the date of filing the certificate; and
- (iii) the amendment to the certificate.

(2) An amendment to a certificate of limited partnership shall be filed within 60 days after the day the limited partnership continues business under Section 48-2a-801 after an event of withdrawal of a general partner.

(3) A general partner who knows or reasonably should know that any statement in a certificate of limited partnership or a certificate of amendment to a certificate of limited partnership was false at the time the certificate was executed making the certificate inaccurate in any respect, shall promptly amend the certificate.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(5) A person may not be held liable because an amendment to a certificate of limited partnership has not been filed under Subsection (2) if the amendment is filed within the 60 days specified in Subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Amended by Chapter 193, 2002 General Session

**48-2a-202.5. Actions not requiring amendment.**

Notwithstanding Section 48-2a-202, a limited partnership is not required to amend the limited partnership's certificate of limited partnership to report a change in the information required by Subsection 16-17-203(1).

Amended by Chapter 364, 2008 General Session

**48-2a-203. Voluntary cancellation of certificate.**

A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed with the division and shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

Amended by Chapter 189, 1991 General Session

**48-2a-203.5. Involuntary dissolution of certificate.**

(1) A certificate of limited partnership may be canceled involuntarily by a decree of a district court having competent jurisdiction upon petition by the director of the division, or by a party in interest who shall have standing to bring such an action, when it is established that:

(a) the limited partnership procured the issuance of a stamped copy of its certificate of limited partnership or the execution of the certificate of limited partnership through fraud, in which case the certificate shall be canceled as of the date of its filing; or

(b) the limited partnership has continually exceeded or abused the authority conferred upon it by law or by the partnership agreement.

(2) A domestic limited partnership or a foreign limited partnership registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) The division shall mail a notice of delinquency of a delinquent limited partnership to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one general partner of the limited partnership.

(b) The notice of delinquency required under Subsection (3)(a) shall state:

(i) the nature of the delinquency; and

(ii) that the limited partnership shall be dissolved unless within 60 days of the mailing of the notice of delinquency it corrects the delinquency.

(c) The division shall include with the notice of delinquency any forms necessary to correct the delinquency.

(4) (a) If the limited partnership does not remove the delinquency within 60 days from the date the division mails the notice of delinquency, the limited partnership's certificate or registration shall be dissolved involuntarily by the director of the division effective on the date specified in Subsection (4)(c).

(b) If a limited partnership's certificate or registration is dissolved under Subsection (4)(a), the division shall mail a certificate of dissolution to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one partner of the limited partnership.

(c) A limited partnership's date of dissolution is five days from the date the division mailed the certificate of dissolution under Subsection (4)(b).

(d) A dissolved limited partnership may not be reinstated except as set forth in Subsection (5).

(e) On the date of dissolution, any assumed names filed on behalf of the dissolved limited partnership under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(f) Notwithstanding Subsection (4)(e), the name of a dissolved limited partnership and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (4)(e), if the limited partnership that is dissolved is reinstated in accordance with this section, the registration of the name of the limited partnership and any assumed names filed on its behalf are reinstated back to the date

of dissolution.

(5) Any limited partnership whose certificate or registration has been dissolved under this section or Section 48-2a-203 may be reinstated within two years following the date of dissolution upon:

- (a) application; and
- (b) payment of:
  - (i) all penalties; and
  - (ii) all reinstatement fees.

(6) A limited partner of a limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership having had its limited partnership certificate or registration dissolved.

(7) A limited partnership that has had its certificate or registration dissolved may not maintain any action, suit, or proceeding in any court of this state until it has reinstated its certificate or registration following dissolution.

(8) If the division denies a limited partnership's application for reinstatement following a dissolution under this section, the division shall mail the limited partnership written notice:

- (a) setting forth the reasons for denying the application; and
- (b) stating that the limited partnership has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(9) A notice or certificate mailed under this section shall be:

- (a) mailed first-class, postage prepaid; and
- (b) addressed to the most current mailing address appearing on the records of the division for:
  - (i) the registered agent of the limited partnership corporation, if the notice is required to be mailed to the registered agent; or
  - (ii) the partner of the limited partnership that is mailed the notice, if the notice is required to be mailed to a partner of the limited partnership.

Amended by Chapter 382, 2008 General Session

**48-2a-204. Execution of certificates.**

(1) Each certificate required by this chapter to be filed with the division shall be executed in the following manner:

- (a) an original certificate of limited partnership must be signed under penalty of perjury by all general partners;
- (b) a certificate of amendment must be signed under penalty of perjury by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
- (c) a certificate of cancellation must be signed under penalty of perjury by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

Enacted by Chapter 233, 1990 General Session

**48-2a-205. Execution by judicial act.**

If a person required by Section 48-2a-204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition a district court having competent jurisdiction to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the division to record an appropriate certificate.

Enacted by Chapter 233, 1990 General Session

**48-2a-206. Filing with the division.**

(1) An original and one copy of the certificate of limited partnership, and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the division. A person who executes a certificate as an attorney-in-fact or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the division finds that any certificate does not conform to law as to its form, upon receipt of all filing fees established under Section 63J-1-504, it shall:

(a) place on the original and the copy a stamp or seal indicating the time, day, month, and year of the filing, the director of the division's signature, and the division's seal, or facsimiles thereof, and the name of the division;

(b) file the signed original in its office; and

(c) return the stamped copy to the person who filed it or the person's representative.

(2) The stamped copy of the certificate of limited partnership and of any certificate of amendment or cancellation shall be conclusive evidence that all conditions precedent required for the formation, amendment, or cancellation of a limited partnership have been complied with and the limited partnership has been formed, amended, or canceled under this chapter, except with respect to an action for involuntary cancellation of the limited partnership's certificate for fraud under Subsection 48-2a-203.5(1)(a).

(3) Upon the filing of a certificate of amendment or judicial decree of amendment with the division, the certificate of limited partnership is amended as set forth in the certificate of amendment or judicial decree of amendment, and upon filing a certificate of cancellation, or of a judicial decree of cancellation, the division shall cancel the certificate of limited partnership effective as of the date the cancellation was filed or as of the date specified in the decree, unless a later effective date is specified in the cancellation.

Amended by Chapter 183, 2009 General Session

**48-2a-207. Liability for false statement in certificate.**

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reasonable reliance on the

statement may recover damages for the loss from:

(1) any person who executed the certificate, whether in his own name or on behalf of another as attorney-in-fact, who knew, or reasonably should have known, that the statement was false at the time the certificate was executed; and

(2) any general partner who at any time knew, or reasonably should have known, that the statement was false at the time the certificate was executed or knew or reasonably should have known that any arrangement or other fact described in the certificate had changed, making the statement inaccurate in any respect, if that general partner failed to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 48-2a-202 or 48-2a-203, within 30 days of the date on which the general partner knew, or reasonably should have known, that the statement was false or that the change had occurred.

Amended by Chapter 30, 1992 General Session

**48-2a-208. Scope of notice.**

The fact that a certificate of limited partnership or amendment to a certificate of limited partnership is on file in the office of the division is notice that the partnership is a limited partnership and the persons designated as general partners are general partners, but it is not notice of any other fact.

Amended by Chapter 189, 1991 General Session

**48-2a-209. Delivery of certificates to limited partners.**

Upon the return by the division pursuant to Section 48-2a-206 of a stamped copy of any certificate, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

Enacted by Chapter 233, 1990 General Session

**48-2a-210. Annual report.**

(1) (a) Each domestic limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file an annual report with the division:

(i) during the month of its anniversary date of formation, in the case of domestic limited partnerships; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited partnerships authorized to transact business in this state.

(b) The annual report required by Subsection (1)(a) shall set forth:

(i) the name of the limited partnership;

(ii) the state or country under the laws of which it is formed;

(iii) the information required by Subsection 16-17-203(1);

(iv) any change of address of a general partner; and

(v) a change in the persons constituting the general partners.

(2) (a) The annual report required by Subsection (1) shall:

- (i) be made on forms prescribed and furnished by the division; and
- (ii) contain information that is given as of the date of execution of the annual report.

(b) The annual report forms shall include a statement of notice to the limited partnership that failure to file the annual report will result in the dissolution of:

- (i) the limited partnership, in the case of a domestic limited partnership; or
- (ii) its registration, in the case of a foreign limited partnership authorized to transact business in this state.

(c) The annual report shall be signed by:

- (i) any general partner under penalty of perjury; and
- (ii) if the registered agent has changed since the last annual report or other appointment of a registered agent, the new registered agent.

(3) (a) If the division finds that the annual report required by Subsection (1) conforms to the requirements of this chapter, it shall file the annual report.

(b) If the division finds that the annual report required by Subsection (1) does not conform to the requirements of this chapter, the division shall mail the report first-class postage prepaid to the limited partnership at the addresses set forth in the certificate for any necessary corrections.

(c) If the division returns an annual report in accordance with Subsection (3)(b), the penalties for failure to file the annual report within the time prescribed in Section 48-2a-203.5 do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited partnership.

Amended by Chapter 364, 2008 General Session

**48-2a-301. Admission of additional limited partners.**

(1) A person becomes a limited partner on the later of:

- (a) the date the original certificate of limited partnership is filed; or
- (b) the date stated in the records of the limited partnership as the date that person becomes a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

- (a) in the case of a person acquiring a partnership interest directly from the limited partnership or in the case of an assignee of a partnership interest of a partner who does not have authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

- (b) in the case of an assignee of a partnership interest of a partner who has the authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon the exercise of that authority and compliance with any conditions limiting the grant or exercise of the authority.

Amended by Chapter 189, 1991 General Session

**48-2a-302. Voting.**

Subject to Section 48-2a-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

Enacted by Chapter 233, 1990 General Session

**48-2a-303. Liability to third parties.**

(1) Except as provided in Subsection (4), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of Subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificate of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to Section 48-2a-803; or

(h) exercising any right or power permitted limited partners under this chapter



and not specifically enumerated in this subsection.

(3) The enumeration in Subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Subsection 48-2a-102(1)(b) is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Amended by Chapter 189, 1991 General Session

**48-2a-304. Person erroneously believing himself to be a limited partner.**

(1) Except as provided in Subsection (2), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future participation in the profits and losses of the enterprise by executing and filing with the division a certificate declaring withdrawal under this section; withdrawal under this subsection is without prejudice to the person's right to receive the return of his unreturned contribution.

(2) A person who makes a contribution under the circumstance described in Subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate is filed to show withdrawal or before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction and acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person.

Amended by Chapter 189, 1991 General Session

**48-2a-305. Inspection of records -- Right to information.**

(1) Each limited partner has the right to:

(a) inspect and copy any of the partnership records required to be maintained by Section 48-2a-105;

(b) obtain from the general partners from time to time upon reasonable demand:

(i) a copy of any of the partnership records required to be maintained by Section 48-2a-105;

(ii) true and full information regarding the state of the business and financial condition of the limited partnership;

(iii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) other information regarding the affairs of the limited partnership as is just and reasonable.

(2) Unless otherwise provided in the partnership agreement, the cost of providing the information described in this section shall be the responsibility of the partnership.

Enacted by Chapter 233, 1990 General Session

**48-2a-401. Admission of additional general partners.**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

Enacted by Chapter 233, 1990 General Session

**48-2a-402. Events of withdrawal.**

Except as approved by the specific written consent of all partners at the time thereof with respect to Subsections (4) through (10), a person ceases to be a general partner of a limited partnership upon the happening of any of the following events of withdrawal:

(1) The general partner withdraws from the limited partnership as provided in Section 48-2a-602.

(2) The general partner ceases to be a member of the limited partnership as provided in Section 48-2a-702.

(3) The general partner is removed as a general partner in accordance with the partnership agreement.

(4) Unless otherwise provided in the partnership agreement, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated as bankrupt or insolvent;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding described in Subsection (4)(d); or

(f) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties.

(5) Unless otherwise provided in the partnership agreement, if within 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90

days after the expiration of any such stay, the appointment is not vacated.

(6) In the case of a general partner who is a natural person:

(a) his death; or

(b) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate.

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the distribution by the trustee of the trust's entire interest in the partnership, but not merely the substitution of a new trustee.

(8) In the case of a general partner that is a separate partnership, the dissolution and completion of winding up of the separate partnership.

(9) In the case of a general partner that is a corporation, the issuance of a certificate of dissolution or its equivalent, or of a judicial decree of dissolution, for the corporation or the revocation of its charter.

(10) In the case of a person who is acting as a general partner by virtue of being a fiduciary of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Amended by Chapter 324, 2010 General Session

**48-2a-403. General powers and liabilities.**

(1) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(2) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Enacted by Chapter 233, 1990 General Session

**48-2a-404. Contributions by general partners.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a limited partner to the extent of his participation in the partnership as a limited partner.

Amended by Chapter 189, 1991 General Session

**48-2a-405. Voting.**

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

Enacted by Chapter 233, 1990 General Session

**48-2a-501. Form of contribution.**

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Enacted by Chapter 233, 1990 General Session

**48-2a-502. Liability for contribution.**

(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the stated contribution which has not been made.

(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

Enacted by Chapter 233, 1990 General Session

**48-2a-503. Sharing of profits and losses.**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing, profits, and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Enacted by Chapter 233, 1990 General Session

**48-2a-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Amended by Chapter 189, 1991 General Session

**48-2a-601. Interim distributions.**

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Amended by Chapter 189, 1991 General Session

**48-2a-602. Withdrawal of general partner.**

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

Enacted by Chapter 233, 1990 General Session

**48-2a-603. Withdrawal of limited partners.**

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership required to be kept under Section 48-2a-105.

Enacted by Chapter 233, 1990 General Session

**48-2a-604. Distribution upon withdrawal.**

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

Amended by Chapter 189, 1991 General Session

**48-2a-605. Distribution in kind.**

Except as provided in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from the limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

Enacted by Chapter 233, 1990 General Session

**48-2a-606. Right to distribution.**

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

Enacted by Chapter 233, 1990 General Session

**48-2a-607. Limitations on distributions.**

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

Enacted by Chapter 233, 1990 General Session

**48-2a-608. Liability upon return of contribution.**

(1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(3) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept under Section 48-2a-105, of his contribution to the extent that it has been made, less any previous return of contributions.

Amended by Chapter 189, 1991 General Session

**48-2a-701. Nature of partnership interest.**

A partnership interest is personal property.

Enacted by Chapter 233, 1990 General Session

**48-2a-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Except as set forth in Subsection 48-2a-801(4), an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all of his partnership interest.

Amended by Chapter 189, 1991 General Session

**48-2a-703. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent it is the beneficiary of such a charging order, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

Amended by Chapter 189, 1991 General Session

**48-2a-704. Right of assignee to become limited partner.**

(1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement and the conditions set forth in the partnership agreement are met; or

(b) all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles V and VI of this chapter. However, the assignee is not obligated for any other liabilities unknown to the assignee at the time he became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 48-2a-207, 48-2a-502, and 48-2a-608.

Amended by Chapter 189, 1991 General Session

**48-2a-705. Power of estate of deceased or incompetent partner.**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any authority the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Amended by Chapter 189, 1991 General Session

**48-2a-801. Nonjudicial dissolution.**

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) at the time specified in the certificate of limited partnership;
- (2) upon the happening of events specified in writing in the partnership agreement;
- (3) written consent of all partners;
- (4) an event of withdrawal of a general partner unless:
  - (a) at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so; or
  - (b) within 90 days after the event of withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (5) entry of a decree of judicial dissolution under Section 48-2a-802.

Amended by Chapter 189, 1991 General Session

**48-2a-802. Judicial dissolution.**

On application by or for a partner or the director of the division, a district court having competent jurisdiction may decree dissolution of the limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement or for failure to comply with the requirements of this chapter.

Enacted by Chapter 233, 1990 General Session

**48-2a-803. Winding up.**

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but a district court having competent jurisdiction may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

Enacted by Chapter 233, 1990 General Session



**48-2a-804. Distribution of assets.**

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 48-2a-601 or 48-2a-604;
- (2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 48-2a-601 or 48-2a-604; and
- (3) except as provided in the partnership agreement, to partners with respect to their partnership interests:
  - (a) for the return of their contributions; and
  - (b) in the proportions in which the partners share in distributions.

Amended by Chapter 189, 1991 General Session

**48-2a-901. Law governing.**

Subject to the Constitution of this state:

- (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Enacted by Chapter 233, 1990 General Session

**48-2a-902. Registration.**

(1) (a) Before transacting business in this state, a foreign limited partnership shall register with the division.

(b) To register, a foreign limited partnership shall submit to the division in a form provided by the division:

(i) a certificate of good standing or similar evidence of its organization and existence under the laws of the state in which the foreign limited partnership is formed; and

(ii) an original and one copy of an application for registration as a foreign limited partnership, signed under penalty of perjury by a general partner and setting forth:

(A) the name of the foreign limited partnership and, if that name is not available in this state, the name under which it proposes to register and transact business in this state;

(B) the state and date of its formation;

(C) the information required by Subsection 16-17-203(1);

(D) the name and business address of each general partner; and

(E) the street address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(2) Without excluding other activities that may not constitute transacting

business in this state, a foreign limited partnership is not considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

- (a) (i) maintaining or defending any action or suit or any administrative or arbitration proceeding;
- (ii) effecting the settlement of an action or proceeding; or
- (iii) effecting the settlement of a claim or dispute;
- (b) holding a meeting of its general partners or limited partners or carrying on another activity concerning its internal affairs;
- (c) maintaining a bank account;
- (d) (i) maintaining an office or agency for the transfer, exchange, and registration of its securities; or
- (ii) appointing and maintaining a trustee or depository with relation to its securities;
- (e) effecting sales through an independent contractor;
- (f) soliciting or procuring an order, whether by mail or through an employee, agent, or otherwise, if the order requires acceptance without this state before becoming a binding contract;
- (g) creating evidences of debt, mortgages, or liens on real or personal property;
- (h) securing or collecting a debt or enforcing a right in property securing the property;
- (i) transacting business in interstate commerce;
- (j) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature; or
- (k) (i) acquiring, in a transaction outside this state or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or personal property in this state;
- (ii) collecting or adjusting of principal and interest payments on the conditional sale contract or debt described in Subsection (2)(k)(i);
- (iii) enforcing or adjusting a right in property provided for in the conditional sale contract or securing the debt; or
- (iv) taking an action necessary to preserve and protect the interest of the conditional vendor in the property covered by the conditional sales contract or the interest of the mortgagee or holder of the lien in the security, or any combination of the one or more transactions.

(3) (a) The division may permit a tribal limited partnership to register with the division in the same manner as a foreign limited partnership formed in another state.

(b) If a tribal limited partnership elects to register with the division, for purposes of this chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited partnership formed under the laws of another state.

Amended by Chapter 249, 2008 General Session

Amended by Chapter 364, 2008 General Session

#### **48-2a-903. Issuance of registration.**

- (1) If the division finds that an application for registration conforms to law as to

its form, and all requisite fees have been paid, it shall:

- (a) place on the original and the copy of the application a stamp or seal indicating the time, month, day, and year of the filing, the director of the division's signature and the division's seal, or facsimiles thereof, and the name of the division;
  - (b) file in its office the signed original of the application; and
  - (c) issue a certificate of registration to transact business in this state to which is attached the stamped copy.
- (2) The certificate of registration, together with the stamped copy of the application, shall be returned to the person who filed the application or his representative.

Enacted by Chapter 233, 1990 General Session

**48-2a-904. Name.**

A foreign limited partnership shall register with the division under the name under which it is registered in its state of organization; provided that the name includes the words "limited partnership", "limited", "L.P.", or "Ltd." and provided that the name could be registered by a domestic limited partnership.

Enacted by Chapter 233, 1990 General Session

**48-2a-905. Changes and amendments.**

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described in the statement have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file with the division a certificate, signed under penalty of perjury by a general partner, correcting or amending the statement.

Amended by Chapter 189, 1991 General Session

**48-2a-906. Cancellation of registration.**

A foreign limited partnership may cancel its registration by filing with the division a certificate of cancellation signed under penalty of perjury by a general partner. A cancellation does not terminate the authority of the director of the division to accept service of process on the foreign limited partnership with respect to claims for relief and causes of action against the foreign limited partnership arising before the cancellation.

Amended by Chapter 189, 1991 General Session

**48-2a-907. Transaction of business without registration.**

- (1) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.
- (2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of

this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the fact that the foreign limited partnership has transacted business in this state without registration or has otherwise become subject to the jurisdiction of the courts of this state.

(4) A foreign limited partnership, by transacting business in this state without registration, appoints the director of the division as its agent for service of process with respect to claims for relief and causes of action arising out of the transaction of business in this state.

Amended by Chapter 189, 1991 General Session

**48-2a-908. Action by director of division.**

The director of the division may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this Article.

Enacted by Chapter 233, 1990 General Session

**48-2a-1001. Right of action.**

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action and the general partners' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those general partners to bring the action is not likely to succeed.

Enacted by Chapter 233, 1990 General Session

**48-2a-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(1) must have been a partner at the time of the transaction of which he complains; or

(2) his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Amended by Chapter 189, 1991 General Session

**48-2a-1003. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Enacted by Chapter 233, 1990 General Session

**48-2a-1004. Expenses.**

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

Enacted by Chapter 233, 1990 General Session

**48-2a-1005. Security and costs.**

In any action instituted in the right of any domestic or foreign limited partnership, unless the unreturned contributions to the partnership property of or allocable to the plaintiff amount to 5% or more of the unreturned contributions of all limited partners, in their status as limited partners, or the unreturned contributions of or allocable to the plaintiff have a market value in excess of \$25,000, the limited partnership in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by the limited partnership in the defense of the action or may be incurred by other parties named as defendant for which the limited partnership may become legally liable, but not including attorneys' fees. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive. The limited partnership shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of such action if the court finds the action was brought without reasonable cause.

Amended by Chapter 189, 1991 General Session

**48-2a-1006. Indemnification of a general partner.**

To the extent that a general partner has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the general partner under Section 48-2a-1001, or in defense of any claim, issue, or matter therein, the general partner shall be indemnified by the limited partnership against expenses, including attorneys' fees, which the general partner actually and reasonably incurred.

Enacted by Chapter 233, 1990 General Session

**48-2a-1101. Construction and application.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Enacted by Chapter 233, 1990 General Session

**48-2a-1102. Short title.**

This chapter may be cited as the "Utah Revised Uniform Limited Partnership Act."

Enacted by Chapter 233, 1990 General Session

**48-2a-1103. Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 233, 1990 General Session

**48-2a-1104. Effective date -- Extended effective date -- Applicability of former law.**

Except as set forth below, the effective date of this chapter is July 1, 1990.

(1) The existing provisions for execution and filing of certificates of limited partnerships continue in effect with respect to limited partnerships organized prior to the effective date of this chapter until January 1, 1991, the extended effective date, and Sections 48-2a-102, 48-2a-105, 48-2a-201, and 48-2a-210 are not effective with respect to such preexisting limited partnerships until January 1, 1991, the extended effective date.

(2) Sections 48-2a-210, 48-2a-901, 48-2a-902, 48-2a-903, 48-2a-904, 48-2a-905, 48-2a-906, 48-2a-907, and 48-2a-908, governing the registration of foreign limited partnerships are not effective until January 1, 1991, the extended effective date.

(3) Sections 48-2a-501, 48-2a-502, and 48-2a-608 apply only to contributions and distributions made after July 1, 1990, and Subsection 48-2a-102(1)(a) applies only to limited partnerships formed or qualified after July 1, 1990.

(4) Section 48-2a-704 applies only to assignments made after July 1, 1990.

(5) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of Section 48-2a-503, sharing of distributions, rather than the provisions of Section 48-2a-504, interim distributions, rather than the provisions of Section 48-2a-601, distributions to a withdrawing partner, rather than the provisions of Section 48-2a-604, and distributions of assets upon the winding up of a limited partnership, rather than the provisions of Section 48-2a-804, govern limited partnerships formed before July 1, 1990.

(6) The county clerk in each county in this state shall transmit to the division by January 1, 1991, all certificates of limited partnership and certificates of amendment filed with them prior to July 1, 1990, by domestic limited partnerships whose existence has not terminated prior to July 1, 1990.

Amended by Chapter 5, 1991 General Session

Amended by Chapter 189, 1991 General Session

**48-2a-1105. Rules for cases not provided for in this chapter.**

In any case not provided for in this chapter, the provisions of Title 48, Chapter 1, Part 1, General Partnership, govern.

Amended by Chapter 340, 2011 General Session

**48-2a-1106. Savings clause.**

The repeal of any statutory provision by this chapter does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on July 1, 1990, nor does the repeal of any existing statutory provision by this chapter impair any contract or affect any right accrued before July 1, 1990.

Enacted by Chapter 233, 1990 General Session

**48-2a-1107. Fees.**

The division may charge and collect fees in accordance with the provisions of Section 63J-1-504.

Amended by Chapter 183, 2009 General Session